



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

Ref: 8P-AR

Mr. Dave Ouimette
Air Pollution Control Division
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

RE: Proposed Short Term Limits Policy

Dear Dave:

Thank you for the opportunity to talk with you and your staff concerning the proposed policy for short term limits. We understand that your proposed policy document is the culmination of a great deal of hard work, both internally, in consultation with my staff, and with the industry stakeholders. We understand that this policy would not apply to short term limits required by state or federal regulations, as listed in Attachment A to the draft policy.

The Clean Air Act allows the States a certain amount of discretion, particularly in developing minor new source permit programs. We acknowledge the Division's effort to exercise its discretion in a way that maximizes regulatory flexibility while continuing to meet the goal of protecting ambient air quality. Nonetheless, we have significant concerns about your proposed action, which are described in the enclosure to this letter. We would be happy to discuss any of these concerns with you further.

We realize that you have already begun to implement this policy. A number of Title V operating permits received here for review omit the short term limits apparently established under the state's minor source preconstruction permit program. The Technical Review Document for Operating Permit 96OPWE162 (Metal Container Corporation's Windsor Facility), for example, notes in Section I ("Purpose"): "All short term emission and production/throughput limits that appeared in the construction permits associated with this facility that are not required by a specific State or Federal standard or by the above-referenced [draft policy] Division procedures have been deleted and all annual emission and production/throughput limits converted to a rolling 12 month total." Section VII of the same document supplies a list of short term limits "deleted from operating permit."



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As you are aware, all permit limits imposed through a SIP-approved permit program are federally enforceable (see United States v. Louisiana-Pacific Corp., 682 F. Supp. 1141, 1159 (D.Colo. 1988) and are also “applicable requirements” which must be included in a facility’s Title V permit (see 40 C.F.R. section 70.2). Such requirements, like the short term limits in Colorado’s construction permits, may not be omitted or deleted from operating permits until they first have been removed from the underlying preconstruction permits. Alternatively, the change could be processed in both permits concurrently, as a form of “parallel processing.” In earlier discussions, we may not have been clear about the procedural requirements for revising or deleting short-term permit limits. We apologize. We wish to make clear now that in future permitting actions, the Division should use its construction permit modification procedures to delete or change short term limits in the underlying construction permit before, or at the same time as, you delete any of these limits from the operating permit for the facility. For operating permits that have already been issued, the appropriate action is to promptly revise the construction permits, if they have not already been revised, to avoid having to reopen the permits for cause.

After you have had an opportunity to review our comments, please feel free to contact me or have your staff contact Meredith Bond at 303-312-6438.

Sincerely,

Richard R. Long, Director
Air and Radiation Program

Enclosures

Enclosure

1. Our fundamental concern is that this policy could result in a significant increase in emissions from stationary and area sources, the cumulative effects of which will not be appropriately analyzed, leading to potential violations of the NAAQS and increments and negative impacts on public health and welfare. It is especially troubling that Colorado intends to begin implementing this policy without considering the potential adverse effects on the new ozone and PM_{2.5} NAAQS.

The problem arises because applying a simple multiplier to change a short-term limit to a long-term limit (e.g., multiplying a 24-hour limit by 365 to create an annual limit) allows a source greater variability in its emissions on a short-term basis. Depending on the particular source and the pollutant involved, this greater variability could cause violations of short-term NAAQS or increments. When this greater variability applies to a significant number of stationary and area sources, the potential problem is greatly magnified.

The policy does not address how or whether this increased variability of emissions will be considered in permit or SIP modeling. In this regard, we believe the widespread use of long-term emissions limits necessitates a worst-case approach to modeling, not just for the source seeking a permit, but also for other sources that contribute to nearby or background concentrations. For example, when evaluating impacts on a 24-hour NAAQS like PM₁₀, it is necessary to analyze emissions over 24 hours. If sources only have annual limits for PM₁₀, we do not believe it would be acceptable to divide by 365 to calculate 24-hour values for purposes of modeling. The annual limits provide no assurance that the sources being modeled will limit emissions to 1/365 of the annual limit on a 24-hour basis. The only approach that seems to be protective is to model the target source, **and nearby background sources**, at their maximum potential to emit over 24 hours. We believe this is necessary for both permit and SIP modeling.

This approach may seem overly conservative, but we cannot envision how the widespread use of long-term emissions limits can otherwise be shown to protect the NAAQS and increments. It is noteworthy that EPA's modeling guideline contemplates the use of a source's federally enforceable short-term permit limit or short-term maximum allowable emission limit in modeling compliance with short-term NAAQS. This is true not only for the target source, but also for nearby background sources. See 40 CFR Part 51, Appendix W, Tables 9-1 and 9-2. Absent a short-term SIP or permit limit, actual or design capacity (whichever is greater) is the sole emission input to be considered, along with averaging time, in the modeling.

This approach is reinforced by EPA guidance regarding the requirement that SIPs be enforceable. For example, a September 23, 1987 EPA memorandum entitled, "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,"

states that SIP rules should describe the compliance time frame associated with each emission limit and indicates that the compliance time frame must be sufficient to protect the standard involved. The memorandum clarifies this policy as follows:

“The averaging time in the rule must be consistent with protecting the ambient standard in question. Normally, it should be equal to or shorter than the time associated with the standard. Longer term averaging is available only in limited instances provided that the ambient standard is not compromised.”

Similarly, EPA’s “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990”, 57 FR 13498, 13568, declares that one of the fundamental principles for SIPs is that the control strategy be accountable and indicates that this means that source-specific limits should be permanent and must reflect the assumptions used in the SIP demonstrations. In other words, if you assume that a source’s 24-hour emissions are equivalent to its annual emissions limit divided by 365, you should include a 24-hour emissions limit reflecting this value in the SIP. We believe this fundamental SIP principle also applies to permit limits, given that the goal of protecting the NAAQS is the same.

Thus, it is EPA’s position that the Division may only change sources’ emission limits from short-term to long-term averaging times if the Division conducts worst-case modeling that shows no violations of short-term NAAQS and increments. In EPA’s view, the target source must be modeled at its maximum potential to emit over the short-term averaging time(s) associated with the NAAQS and increments. In evaluating the contribution of nearby and background sources to the modeled values, the Division must account for the absence of short-term limits by modeling nearby and background sources without short-term limits at their maximum potential to emit over the short-term averaging time(s) associated with the NAAQS and increments. Given the likelihood that the Division will be processing many requests for changes in averaging time simultaneously, any analysis must be designed to account for likely changes to averaging times for nearby and background sources. Or, source requests must be analyzed in sequential fashion with the Division updating model inputs for each successive source to account for the prior elimination of short-term limits for other sources that are nearby or contribute to background.

2. Regarding synthetic minor sources, we must call attention to EPA’s long-standing policy that long term rolling averages are appropriate for limiting a source’s potential to emit only under certain circumstances. As stated in the January 25, 1995, “Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits:”

“EPA policy expresses a preference toward short term limits, generally daily but not to exceed one month. However, EPA policy allows for rolling limits not to exceed 12 months or 365 days where the permitting authority finds that the limit provides an assurance that compliance can be readily determined and verified. See June 13, 1989 “Guidance on Limiting

Potential to Emit,” February 24, 1992 Memorandum “Use of Long Term Rolling Averages to Limit Potential to Emit” from John Rasnic to David Kee, and March 13, 1992 “Policy Determination on Limiting Potential to Emit for Koch Refining Company’s Clean Fuels Project” from John B. Rasnic to David Kee, stating that determinations to allow an annual rolling average versus a shorter term limit must be made on a case by case basis.” (See January 25, 1995 Memorandum from Kathie A. Stein to the Regional Air Division Directors and its attached guidance.)

Copies of the four documents referenced above are enclosed with this letter for your future reference. (These documents are also available in the New Source Review Guidance Notebook, and through EPA’s Technology Transfer Network internet web site at www.epa.gov/ttn.) Please contact us if you need assistance to interpret and apply the principles outlined in these EPA policy and guidance documents.

Note that these policy statements related to limiting potential to emit do not relieve the State of appropriately modeling sources that only have long-term limits, as described in paragraph 1, above. In fact, synthetic minor sources present a particularly compelling case for worst-case modeling because rolling annual limits on hours of operation or throughput in no way limit a source’s ability to operate at maximum capacity over an hourly or daily interval.

3. We feel that it is important to note that a stack test alone is not generally adequate to show compliance with a long term rolling emission limit. This is especially true in the instance of a synthetic minor source: Since the stack test yields an "emission rate" (usually time based but could be tied to heat input, other raw material feed rate, process throughput, etc.), the permit still needs appropriate monitoring, record keeping, and reporting requirements to measure time, heat input, etc., in order to convert to actual emissions for comparison to the limit. In addition, appropriate periodic (i.e., parametric) monitoring should be included in permits as an indicator of the ongoing validity of the stack test results for the time between discrete emission rate measurements.
4. We have discussed tracking of minor source increment consumption. The use of longer-term limits does not alter the State’s obligation to track increment consumption by minor sources and minor modifications, and to not issue permits that will cause violation of increment. Please see section 163 of the Clean Air Act, and 40 CFR 51.166(a)(3) and (4). If there is evidence of increment violation, the State must revise the SIP, and EPA may call for a SIP revision.
5. Merged permit process – We understand that, in some instances, the Division may permit a change at a facility (pursuant to Regulation 3, Part A, section 1.B.35.C.e) through a merged process under the State’s operating permit regulations (pursuant to Regulation 3, Part C, section X.A) and the State’s construction permit regulations (pursuant to Regulation 3, Part B, section IV.D.1.a through h). In such an instance, the resulting terms and conditions would be embodied in a single permit document (the operating permit).

We are concerned, though, that the operating permit would have an expiration date, while the terms and conditions derived from the merged permitting process would have no underlying source (i.e., would not appear in a construction permit) and therefore should not be allowed to expire. Accordingly, it is necessary that the operating permit identify the conditions relevant to the merged permitting process as remaining in full force and effect, regardless of the expiration date of the operating permit. This could be accomplished by adding a provision to the first section of the operating permit, which lists the relevant conditions by number, indicates that such conditions survive the expiration of the operating permit, and specifies that any future changes to these conditions must be made pursuant to the relevant procedural requirements of both the construction permit rules and the operating permit rules, except where the State's regulations allow the changes to be made through the merged process.

6. In Attachment A, number 6, of the proposed policy, you only list three of the NAAQS. All NAAQS should be listed.
7. Finally, we have some wording recommendations to clarify interpretation of the requirements of the Act:
 - a. In items 1. and 2. under your heading **Proposed Policy**, we suggest adding "...if air quality modeling indicates that the source would cause or contribute to a potential exceedance of the NAAQS." This is consistent with the Clean Air Act and EPA policy, in that ambient air quality would be protected from sources whose emissions in themselves may not violate the NAAQS but where modeling could show violation with combined impacts from neighboring sources.
 - b. In the first sentence under your heading **Enforcement of Permit Limits**, use the phrasing: "Permit limits will be enforced in the usual manner, ~~i.e.,~~ including but not limited to...." This would prevent inadvertently limiting your ability to use any and all credible evidence available to you for enforcement purposes.
 - c. For clarification, we suggest adding the following to item 1. of Attachment A: "1. BACT & LAER...usually require short term limits in accordance with EPA policy and guidance."



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Mr. David Ouimette
Air Pollution Control Division
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Re: Combined Permit Process

Dear Dave:

In my letter of September 22, 1998, concerning Colorado's short-term limits policy, I noted that the Air Pollution Control Division has already begun to implement the policy by deleting short-term emission limits from and converting long-term limits to 12-month rolling averages in a number of initial operating permits. I commented that the Division would need to revise the underlying preconstruction permits to reflect these changes. After further discussion with your staff, we realize that we failed to consider the effect of Part C, section III.B.7 of Regulation No. 3, the general provision allowing sources to submit an application for a combined operating and construction permit. This provision allows a preconstruction permit to be revised in a combined permit that includes the initial issuance of the operating permit. Under this provision, the changes in averaging times for permit limits may be made directly in a combined construction/operating permit, as the Division apparently has done..

In reviewing the combined permit provision of Regulation No. 3, we noticed that it does not explicitly refer to the substantive requirements for construction permits found in Part B, section IV.D.1.a. through h. This is in contrast to the provision allowing a construction permit to be revised through the revision of an operating permit (Part A, section I.B.35.d.v.), which does explicitly refer to those requirements. We are concerned that without such explicit reference, sources appear to be subject to lesser review when a construction permit is revised in combination with initial operating permit issuance than when a construction permit is revised in combination with revision of an operating permit that has already been issued. This issue may be resolved if the "standard application form" for the combined construction/operating permit contains the requirements of section IV.D.1, as the preface implies: "Requirements applicable to all construction permit applications (except that processing timeframes of combined construction/operation applications shall be as set forth in Part C, Section IV. of this Regulation No. 3)." We would appreciate confirmation that the Division follows this interpretation and that



the substantive permit requirements do apply to combined permits issued under Part C, section III.B.7.

I would like to reiterate the caution expressed in my earlier letter. In each case where short-term limits are deleted or changed to long-term limits, the Division must assure that the long-term limits will be adequate to protect short-term national ambient air quality standards. Additionally, as discussed in Section 5 of the enclosure to my September 22 letter, the combined permit should give notice that it contains altered construction permit requirements derived from a new source review process, which survive the expiration of the operating permit. If you have any comments or questions, please feel free to contact me or have your staff contact Meredith Bond at 303-312-6438.

Sincerely,

Richard R. Long, Director,
Air and Radiation Program